2016

Playing Ping-Pong With the Lives and Education of Disabled Children is a Bad Idea: Why the Stay-put Provision Should Protect Disabled Children Through the Entire Appeal Process

Lisette Guzman

PLAYING PING-PONG WITH THE LIVES AND EDUCATION OF DISABLED CHILDREN IS A BAD IDEA: WHY THE STAY-PUT PROVISION SHOULD PROTECT DISABLED CHILDREN THROUGH THE ENTIRE APPEAL PROCESS

Lisette Guzman

I. Introduction

Jane is eleven years old, entering the fifth grade, and has a learning disability. She meets the definition of handicapped under 20 USC §1401(1). [1] The public school Jane attended proposed in her individualized educational plan that she continue to attend the public school with once a week one-on-one evaluation. Jane's parents felt that the placement was inadequate given her disability and challenged the school's determination. Her parents placed her in a private school that provided individualized education for learning disabled children. They requested due process hearings to dispute the placement the school district deemed appropriate.[2] The hearing officer found the placement the public school had provided to be inadequate. The school district appealed the administrative decision to the federal district court, which reversed and found the public school placement to be adequate.

Jane's parents continue their fight and appeal to the circuit court of appeals. In the interim, a placement dilemma arises: what should Jane's parents do about her schooling? Most likely they would prefer to keep her in the private setting, which they believe is the best place for her. Furthermore, at the administrative level the private school placement has been found as providing appropriate education. This decision may be difficult, however if they will not be reimbursed for the tuition during the time the appeal is pending. Jane's parents only option if the stay-put provision does not apply during the appeal, would be to place her in the public school that the lower court found appropriate simply because they could not afford to keep her in the private school during the appeal. However, this would be unsatisfying because there is a possibility that the court of appeals would reverse and find the private school as the appropriate

[1] 20 U.S.C §1401(1) (1990) ("Handicapped" as defined in Individuals with Disabilities Education Act).
[2] *See* 20 U.S.C § 1415 (b)(6)(2004); 34 C.F.R § 300.506 (2007).

setting. Keeping Jane in the private setting during the appeal is in her best interest because she would not be moved from school to school, and she would have consistency while the placement dispute is ultimately resolved.

The "stay-put" provision in 20 U.S.C § 1415 (j) would seem to have answered the question of what to do with Jane in the middle of all the back and forth of the litigation: literally to "stay-put" in the current school placement until "all such proceedings have been completed."[3] From the plain language of the statute, it would appear that all "proceedings" would encompass all judicial proceedings—including appeals to the circuit courts for final determination.

However, there is a circuit split as to the meaning of the language in 20 U.S.C § 1415 (j), with circuits reading the language either broadly or narrowly.[4] Specifically, with some courts implementing the stay put provision between appeals from the district level to the circuit level, while other courts limiting it to the district level only.[5] The reading of the statute has a real effect on the daily lives of disabled children throughout the United States. Circuits that read the language narrowly limit access to free appropriate education, a right that all disabled students have in this country. Moreover, the right to appeal is limited by the narrow reading.

This note addresses the current circuit split on deciding when pendency ends with the "stay-put" provision and what "all such proceedings" entails. This note argues that the pendency should not end until the final resolution through the entire judicial process, including at the circuit level. Further this note maintains that from the plain language of the stay-put provision, it

[3] 20 U.S.C. § 1415(j) (2006) (Maintenance of current educational placement: "Except as provided in subsection (k)(4), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.").

[4] *Compare* M.R. v. Ridley Sch. Dist., 744 F.3d 112, 125 (3d Cir. 2014); *with* Andersen v. Dist. of Columbia, 877 F.2d 1018, 1023-24 (D.C. Cir. 1989)

[5] *Id.*

is evident that the Congressional intent was to provide students to remain "stay-put" during the entire appeal process including review by the circuit courts. Part II of this note describes the relevant background of the main laws that give students with disabilities access to free appropriate education[6] through the Individuals with Disabilities Education Act ("IDEA") and the Department of Education regulations.[7] Part III addresses the conflicting case law that has interpreted the stay-put provision and created a circuit split.[8] Part IV analyzes the Supreme Court precedent on IDEA. Finally, Part V argues that the courts should read the language of the stay-put provision broadly in order to allow disabled students to remain in their current placements through all final appeals. Reading the provision broadly protects the right of disabled students to free appropriate public education. Additionally, the Congressional intent of the Act supports the premise that stay-put provision protects disabled students placement through the circuit level.

II. Relevant background

a. IDEA and FAPE

One of the fundamental values in this country is access to education for all.[9] Although the Constitution does not explicitly grant a right to education,[10] it is nonetheless considered of great importance for the advancement of the individual and society as a whole in this country.[11] Traditionally, those with access to formal education have been able to secure jobs and contribute

[6] 20 U.S.C. § 1400 (2004); 20 U.S.C. § 1412(a)(1)(A) (2004).

[7] 20 U.S.C. § 1400 (2004)

[8] *Compare* M.R. v. Ridley Sch. Dist., 744 F.3d 112, 125 (3d Cir. 2014); *with* Andersen v. Dist. of Columbia, 877 F.2d 1018, 1023-24 (D.C. Cir. 1989)

[9] *See generally* Plyler v. Doe, 457 U.S. 202, 221 (1982)("In sum, education has a fundamental role in maintaining the fabric of our society.").

[10] *See generally* Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 35 (1973) ("Education, of course, is not among the rights afforded explicit protection under our Federal Constitution.").

[11] *See generally* Meyer v. Neb., 262 U.S. 390, 400 (1923).

to the national economy.[12] The majority of students in the United States attend public school with thousands of dollars spent on both the students and the systems per student, such as teachers that support them.[13]

There is also the option, for some, of private schooling. In the United States, about ten percent of elementary and secondary school students are enrolled in private schools. [14] The average cost of private schooling can cost as much as a year of college tuition.[15] While private schooling for most students is an option or lifestyle choice by their parents, for disabled students it is sometimes a necessity. Private schooling for a disabled child may be a necessity if the public school does not meet their educational needs. In the United States, approximately thirteen percent of students have disabilities.[16] Although many disabled students would like to receive their education at public schools, if the schools cannot give the disabled child the appropriate education they are entitled to, they must look to the private alternative.

The federal government entitles every child with a disability to "free appropriate public education."[17] Congress passed the Individuals with Disabilities Education Act ("IDEA") in 1975[18] to provide that all children with disabilities have free appropriate public education

[12] United States v. Lopez, 514 U.S. 549, 620 (1995) ("Scholars estimate that nearly a quarter of America's economic growth in the early years of this century is traceable directly to increased schooling.")
[13] Carole Feldman, *Education In America: Facts And Figures As Students Head Back To School*, Aug. 31, 2013 http://www.huffingtonpost.com/2013/08/31/education-in-america_n_3849110.html
[14] *Digest of Education Statistics: 2012*, U.S. Department of Education Institute of Education Sciences National Center for Education Statistics (Dec. 2013), http://nces.ed.gov/programs/digest/d12/
[15] Emily Driscoll, *Private School Education: Worth the Cost?*, Fox Business (April 27, 2012), http://www.foxbusiness.com/personal-finance/2012/04/27/private-school-education-worth-cost/
[16] *How many students with disabilities are in our school(s)?*, Center for Public Education http://www.data-first.org/data/how-many-students-with-disabilities-are-in-our-schools/

[17] 20 U.S.C. § 1412(a)(1)(A)(2004).

[18] 20 U.S.C § 1400; Dennis Fan, *No Idea What the Future Holds: The Retrospective Evidence Dilemma*, 114 COLUM. L. REV. 1503, 1507 (2014)

("FAPE").[19] Originally, IDEA was called the Education of the Handicapped Act ("EHA") and was the result of various congressional studies that found that disabled children were being excluded from public schools throughout the United States.[20] Under the Act, FAPE is provided if the services for special education are provided for free to the disabled student, the services appropriately meet the state standards, and they conform to the individualized educational plan ("IEP").[21]

Approximately six million students are protected under IDEA in the United States.[22] Services are available to children who need them through IDEA to help their learning regardless of their disability. Early intervention services are available from birth to age two for infants and toddlers with disabilities under IDEA Part C.[23] For those ages three to twenty-one, IDEA Part B provides those special education services.[24] Various regulations and laws regulate access to FAPE.[25] To achieve participation with IDEA, the federal government provides funds to

[19] 20 U.S.C. § 1400.
[20] 20 U.S.C. § 1400 (c)(2) (2004).
[21] 20 U.S.C. § 1401(18); *See* Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass., 471 U.S. 359, 367-68, (1985) (The Act defines a 'free appropriate public education' to mean 'special education and related services which (A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the State educational agency, (C) include an appropriate preschool, elementary, or secondary school education in the State involved, and (D) are provided in conformity with [an] individualized education program.'').

[22] Dennis Fan, *No Idea What the Future Holds: The Retrospective Evidence Dilemma*, 114 Colum. L. Rev. 1503, 1507 (2014)

[23] *Building the Legacy: IDEA* 2004, United States Department of Education http://idea.ed.gov/
[24] *Id.*
[25] 20 U.S.C. § 1412(a)(1)(A); 20 U.S.C. § 1415(f); 34 CFR 300.518

participating districts.[26] Currently, all fifty states, eight territories, the District of Columbia and schools supported by the Bureau of Indian Affairs provide programs or services through IDEA.[27]

The Congressional intent behind IDEA was to fulfill the goal of FAPE.[28] The long-term goal, of providing FAPE to children with disabilities, was to prepare them for "further education, employment, and independent living."[29] School districts have the duty to comply with IDEA and ensure that FAPE is provided to students who require special education.[30] Schools that receive federal funds must comply with IDEA and ensure that all disabled children are receiving the education mandated by the act.[31] In fact, besides the No Child Left Behind fund, IDEA is the second largest federally funded state grant.[32]

Implementing IDEA in schools is a process with various steps and procedural safeguards.[33] First, a specialist usually in the school, classifies a student as needing additional services or an individualized educational program ("IEP").[34] Second, school personnel meet with the child's parents to formulate the IEP, as required by IDEA.[35] Under the IEP, which

---

[26] *See* Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass., 471 U.S. 359, 368 (1985).

[27] U.S. Department of Education, Office of Special Education and Rehabilitative Services, *Thirty-five Years of Progress in Educating Children with Disabilities Through IDEA*, (2010), http://www2.ed.gov/about/offices/list/osers/idea35/history/idea-35-history.pdf.

[28] *See* Florence Cnty. Sch. Dist. Four v. Carter by & Through Carter, 510 U.S. 7, 12 (1993) ("Congress intended that IDEA's promise of a "free appropriate public education" for disabled children would normally be met by an IEP's provision for education in the regular public schools or in private schools chosen jointly by school officials and parents.").

[29] 20 U.S.C. § 1400 (2004).

[30] *See* Union Sch. Dist. v. Smith, 15 F.3d 1519, 1522 (9th Cir. 1992); *See also* W.G. v. Bd. Of Trustees of Target Range Sch. Dist. No. 23, 960 F.2d 1479, 1486 (9th Cir. 1992) (noting that IDEA gives the responsibility of the IEP process to the state and local educational agencies).

[31] 20 U.S.C. § 1400 (2004).

[32] *School Finance Federal, State, and Local K-12 School Finance Overview*, (Apr. 21, 2014 22:59), http://febp.newamerica.net/background-analysis/school-finance

[33] 20 U.S.C. § 1400 (2004).

[34] 20 U.S.C. § 1414 (2004).

[35] *Burlington*, 471 U.S. at 368 ("The IEP is in brief a comprehensive statement of the educational needs of a handicapped child and the specially designed instruction and related services to be employed to meet those needs. § 1401(19). The IEP is to be developed jointly by a school official qualified in special education, the child's teacher, the parents or guardian, and, where appropriate, the child. In several places, the Act emphasizes the participation of

should be individualized to meet the student's needs, the student may be required to be taken out of the regular classroom setting for individualized help.[36] The IEP must include: the current level of educational performance the student is at; the benchmarks or goals for the student; the services that are to be provided; and whether the student will participate in the general education program with other students.[37] Under IDEA, "special education" means "specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings."[38] Most importantly, the IEP must include how the district will provide FAPE to the student.[39]

The participation of the child's parents or guardians is paramount throughout the entire process.[40] The parents have the right to inspect all documents pertaining to the IEP and obtain an evaluation by someone independent of the school.[41] When the IEP is satisfactory to the parents, the program continues. However, when the parents are dissatisfied with the IEP, they have the right to challenge it.[42]

---

the parents in developing the child's educational program and assessing its effectiveness."); *See also* §§1400(c), 1401(19), 1412(7), 1415(b)(1)(A), (C), (D), (E), and 1415(b)(2); 34 CFR § 300.345 (1984).

[36] Florence Cnty. Sch. Dist. Four v. Carter by & Through Carter, 510 U.S. 7, 10 (1993) (describing the process)
[37] 20 U.S.C. § 1414 (d) (framework is detailed in statute).

[38] 20 U.S.C. § 1401(a)(16); *See* Amanda J. v. Clark Cnty. Sch. Dist., 267 F.3d 877, 890 (9th Cir. 2001)
[39] 20 U.S.C. § 1414
[40] *Burlington*, 471 U.S. at 368-69. ("Section 1415(b) entitles the parents 'to examine all relevant records with respect to the identification, evaluation, and educational placement of the child,' to obtain an independent educational evaluation of the child, to notice of any decision to initiate or change the identification, evaluation, or educational placement of the child, and to present complaints with respect to any of the above.").

[41] *Id*. at 369.
[42] *See* 20 U.S.C. 1415; *Id*. at 368.

IDEA provides the procedural safeguards to challenge the IEP.[43] Specifically, IDEA provides the FAPE provision will be ensured for students through the guaranteed procedural safeguards.[44] The process begins with a complaint and then a preliminary hearing where the parents discuss their concerns with the local educational agency in hopes of reaching an agreement.[45] The agency has thirty days to resolve the issue to the satisfaction of the parents.[46] If the agency has not resolved the issue within that time, the parents have the right to request an impartial due process hearing.[47] Usually the local educational agency or the state educational agency conduct the due process hearing.[48] The hearing officer conducts the hearing and makes the determination as to whether the student is receiving FAPE.[49] After the administrative review, the parties then have the right to have a state or federal court review the administrative decision.[50]

Under IDEA, "any party" can challenge the hearing's findings or decision "in any State court of competent jurisdiction or in a district court of the United States, without regard to the amount in controversy."[51] This means that either the school district or the parents can challenge the administrative decision. Courts have noted that the judicial review of IDEA claims is "substantially" different than other reviews of agencies in that it is far less deferential to lower decisions.[52] The main procedures that differ from the standard appellate review are the

[43] Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 525, (2007); *See* 20 § U.S.C 1415

[44] 20 U.S.C. § 1415(l).
[45] 20 § U.S.C 1415(f) (1) (B)(i)(IV); *Winkelman,* 550 U.S. at 525.
[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] 20 U.S.C. § 1415(i)(2)(A) (2004).
[51] *Id.*

[52] Amanda J. v. Clark Cnty. Sch. Dist., 267 F.3d 877, 887 (9th Cir. 2001) (Congress intended 'judicial review in IDEA cases [to] differ[]substantially from judicial review of other agency actions, in which courts generally are

evidentiary and remedial procedures.[53] The reviewing courts can hear more evidence by the requesting party than usually allowed by the evidence rules and award the relief the court finds is appropriate.[54]

There can be various issues that arise in regards to the placement of a child with a disability during the review period or appeal of the initial determination.[55] Under IDEA, there is a provision that states that "during the pendency of a proceeding" the child is entitled to stay in his "current educational setting."[56] In other words, where the disabled child was being educated at the time of the first dispute of the IEP or placement is where the child should remain unless the parties agree otherwise.[57] The provision is known as the "stay-put" provision, and it is meant to protect the child's "then-current educational placement" until all proceedings are complete.[58]

However, the stay-put provision does not come into play in every situation that involves a placement change.[59] Unilateral placement by parents can affect reimbursement.[60] Take the situation in which the child is moved from public to private school, and a violation of IDEA is filed against the school district much like Jane's parents in the introduction. If the hearing officer finds that the original public school placement provided FAPE, then the parents will not

---

confined to the administrative record and are held to a highly deferential standard of review.'")(citing Ojai Unified Sch. Dist. v. Jackson, 4 F.3d 1467, 1471 (9th Cir. 1993)).

[53] *Id.*

[54] *Id.*

[55] M.R. v. Ridley Sch. Dist., 744 F.3d 112, 117 (3d Cir. 2014) ("A variety of disputes may arise concerning placement. For example, the parents may argue for removing the child from public school because they believe the services are inadequate. Or the school district might argue for the same result, over the parents' objection, because it considers the child too disruptive to be in a regular school setting. Alternatively, either party could be advocating *for* public-school placement — with the school district insisting that an expensive specialized private school is unnecessary or the parents insisting that participation in a regular classroom is essential for their child's development.").

[56] *Id.* at 115; *See* 20 U.S.C. § 1415(j).

[57] *Id.*

[58] *See* 20 U.S.C. § 1415(j).

[59] *M.R.*, 744 F.3d at 118.

[60] Florence Cnty. Sch. Dist. Four v. Carter by & Through Carter, 510 U.S. 7, 15 (1993).

be entitled to reimbursement unless the decision is later reversed.[61] If neither the hearing officer nor district court finds that the school district violated IDEA by not providing FAPE, then the parents move to private school was unilateral and reimbursement would be unavailable.[62]

Agreement by all parties can also implement the new placement as being governed by the stay-put provision.[63] In other words, "[h]aving been endorsed by the State, the move to private school is no longer the parents unilateral action, and the child is entitled to 'stay-put' at the private school for the duration of the dispute."[64] In addition, there are other regulations that protect the child's placement when the initial decision by the hearing officer supports the parents who are seeking a change of placement.[65] The decision in the administrative process or by a court later that affirms the parent's decision that the child should be in a private setting will not be considered a unilateral action by the parents.[66]

Although the cost of educating a student in private schooling is substantial, if the public school district provides FAPE, the district will not be subject to the cost.[67] However, once there

---

[61] *See* Susquenita Sch. Dist. v. Raelee S. By & Through Heidi S., 96 F.3d 78, 83 (3d Cir. 1996).

[62] *Id*.

[63] *M.R.*, 744 F.3d at 118-19 ("The new placement can become the educational setting protected by the stay-put rule if the parents and "the State or local educational agency" agree to the change.").

[64] *Id*. at 119.

[65] 34 CFR § 300.518 (d) (2006) ("If the hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents for purposes of paragraph (a) of this section.").

[66] *M.R.*, 744 F.3d at 119 ("Having been endorsed by the State, the move to private school is no longer the parents' unilateral action, and the child is entitled to "stay-put" at the private school for the duration of the dispute resolution proceedings.").

[67] Florence Cnty. Sch. Dist. Four v. Carter by & Through Carter, 510 U.S. 7, 15 (1993) ("There is no doubt that Congress has imposed a significant financial burden on States and school districts that participate in IDEA. Yet public educational authorities who want to avoid reimbursing parents for the private education of a disabled child can do one of two things: give the child a free appropriate public education in a public setting, or place the child in an appropriate private setting of the State's choice. This is IDEA's mandate, and school officials who conform to it need not worry about reimbursement claims.").

is a violation of IDEA, reimbursement for private school costs is appropriate because without the alternative to public education the disabled child would not be provided with FAPE.[68] If disabled students were not protected by IDEA and had to pay for private school because the public education did not provide appropriate education, then the students would not be receiving *free* appropriate education. The courts have discretion in dispensing the equitable relief, and they can limit reimbursement to what it deems reasonable.[69] That means that if the private school tuition is deemed unreasonably expensive, the courts have the authority to limit the amount reimbursed.[70]

b. The Stay-Put Provision

The stay-put provision in the IDEA act is a powerful provision to protect the educational placement of the child. The stay-put provision acts as a preliminary injunction that does not require the usual showing of irreparable harm when there is a dispute about the placement of a student.[71] The stay-put provision performs like an automatic injunction protecting the student's current educational placement.[72] The provision explicitly provides that during the "pendency" or time it takes for final resolution the disabled child "shall" or must stay in their current educational setting.[73]

The stay-put provision has protected all types of students and at the highest level of the judiciary. The Supreme Court has deliberated the meaning of the stay-put requirement, and it

[68] *Id*. at 15-16; 20 U.S.C. § 1415(e)(2).
[69] *Id*. ("Courts fashioning discretionary equitable relief under IDEA must consider all relevant factors, including the appropriate and reasonable level of reimbursement that should be required. Total reimbursement will not be appropriate if the court determines that the cost of the private education was unreasonable.").
[70] *Id*.
[71] Joshua A. v. Rocklin Unified Sch. Dist., 559 F.3d 1036, 1037 (9th Cir. 2009) ("A motion for stay-put functions as an 'automatic' preliminary injunction, meaning that the moving party need not show the traditionally required factors (e.g., irreparable harm) in order to obtain preliminary relief.").

[72] *Id*. at 1037.
[73] 20 U.S.C. § 1415(j)

has found the scope of the requirement to be substantial.[74] Even students who may be considered dangerous have been protected by the stay-put provision, and they must remain in their current placement.[75]

Congress amended IDEA in 1997 to include that unless agreed otherwise between the parents and the state or local agency, the student had to remain "in the then current educational placement" during the pendency of any proceeding. [76] This provision reflects the concern Congress had with disabled students being forced out of public schools prior to the enactment of IDEA.

The United States Department of Education establishes the federal educational policies and administers most of the federal assistance to education.[77] Congress created the Department in 1975 with specific purposes, such as building the federal commitment to schools to provide access to education for all students equally and to help the States improve the quality of education.[78] Another main purpose was to "to increase the accountability of Federal education programs to the President, the Congress, and the public."[79] In 2010, the Department's budget

[74] Honig v. Doe, 484 U.S. 305 (1988).

[75] *Id*.

[76] Kurtis A. Kemper, Annotation, *Construction and Application of Individuals with Disabilities Education Act, 20 U.S.C.A. §§ 1400 et seq.—Supreme Court Cases*, 13 A.L.R. FED. 2D 321 (2006) "In 1997, Congress amended § 615 of the Individuals with Disabilities Education Act (20 U.S.C.A. § 1415) to provide, in relevant part, that except during the pendency of an appeal from an interim placement of a child, a child must remain in the then current educational placement during the pendency of any proceedings under § 1415 unless the state or local educational agency and the parents otherwise agree (20 U.S.C.A. § 1415(j))."

[77] *An Overview of the U.S. Department of Education*, U.S. Department of Education (Sept. 2010), http://www2.ed.gov/about/overview/focus/what_pg2.html.

[78] *Id*.

[79] *Id*.; *See* Section 102, Public Law 96-88.

was about $60 billion with 4,300 employees.[80] The Office of Special Education Programs at the United States Department of Education guides the implementation of IDEA.[81]

The Department of Education's stay-put regulation includes language of pendency that covers "any administrative or judicial proceeding regarding a due process complaint."[82] The language also mandates that unless otherwise agreed upon between the parents and state, the child "involved in the complaint must remain" in the placement that they were in at the time of due process complaint.[83]

III. Case Law and the Circuit Split

Circuits are currently split on the issue of whether the stay-put provision in an IDEA dispute applies through the pendency of a district court decision or appeal to the circuit court of appeals.[84] In most cases, this means that the issue is whether a child can remain in the school while a parent appeals a federal district court decision to the circuit court of appeals. The Sixth Circuit and the District of Columbia Circuit have held that the pendency terminates at the district court level.[85] This narrow reading would mean that the district court's judgment would be the final judgment. The implication would be that parents who wanted to appeal that court's decision on their child's placement would have no right to reimbursement between the district trial level and the appeal to the circuit level. The Third and Ninth Circuits have held that the pendency applies through final resolution of the dispute including appeals to the circuit court of

---

[80] *Id*.
[81] *IDEA—the Individuals with Disabilities Education Act*, Center for Parent Information and Resources (May 2014), http://www.parentcenterhub.org/repository/idea/.
[82] 34 CFR 300.518
[83] 34 CFR 300.518(a) ("during the pendency of any administrative or judicial proceeding regarding a due process complaint…, unless the state or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.").
[84] *Compare* M.R. v. Ridley Sch. Dist., 744 F.3d 112, 125 (3d Cir. 2014); *with* Andersen v. Dist. of Columbia, 877 F.2d 1018, 1023-24 (D.C. Cir. 1989)
[85] Andersen v. Dist. of Columbia, 877 F.2d 1018, 1023-24 (D.C. Cir. 1989) ((holding that Congress did not intend stay-put financing to cover federal appellate review); Kari H by & Through Dan H. v. Franklin Special Sch. Dist.,1997 U.S. App. LEXIS 21724(6th Cir. Tenn.Aug. 13, 1997).

appeals.[86] The stay-put provision would remain in place until the circuit court's final determination, and the child would be entitled to stay-put provision protection and reimbursement during that time under this reading of the Act.

a. The Stay-Put Provision ends at the District Level

In *Anderson v. District of Columbia*, the court consolidated four cases that involved four children with learning disabilities and their parents.[87] The school districts proposed that the children be placed in public schools for learning disabled but the parents rejected the placement, and enrolled their children in private schools that had full-time special education programs.[88] The parents had due process hearings in which the district initially was ordered to pay the tuition of the private school however, after the district again proposed the public school placement, the hearing officer found it appropriate and denied tuition reimbursement.[89] The parents appealed to the district court, which denied their appeal and also refused to issue a "stay-put" injunction while the parents appealed to the circuit court.[90]

The *Anderson* court rejected the view that the "stay-put" language in U.S.C. § 1415(e) "all such proceedings" meant all proceedings including appeal to the circuit court and petition of

[86] *M.R.*, 744 F.3d at 125 ("Having now considered the question, we agree with the Ninth Circuit — and the district court in this case — that the statutory language and the 'protective purposes' of the stay-put provision lead to the conclusion that Congress intended stay-put placement to remain in effect through the final resolution of the dispute.").

[87] Andersen by Andersen v. D.C., 877 F.2d 1018, 1019 (D.C. Cir. 1989).

[88] *Id.* at 1020. (For school year 1986–87 the school district proposed that each of the three be placed in public schools for learning disabled children—Buchanan Learning Center, a secondary school, for Joshua Andersen and James Bowers, and Prospect Learning Center, an elementary school, for Jason McMullen. The parents rejected the school district's proposed placements and enrolled their children in private facilities providing full-time special education programs.)

[89] *Id.*

[90] *Id.*

certiorari to the Supreme Court.[91] The court reasoned that section § 1415(e)(2) only referenced due process hearings, state administrative review and civil actions in state or district court.[92] The court also referenced *Honig v. Doe*,[93] noting that the Supreme Court in that case found that one of Congress' purposes in enacting § 1415(e)(3) was to prevent the schools from unilaterally excluding disabled children from public schools,[94] and, as a result, once a district court had found the placement appropriate the "change [was] no longer the consequence of a unilateral decision by school authorities.[95] The court ultimately held that once a district court has found the placement appropriate, the only recourse for the parents would be to move for a traditional injunction outside the stay-put provision.[96] Ultimately, without the stay-put provision protections beyond the district level, the parents would not be reimbursed the expense of the private schooling for any appeals after the district level.

Another decision that read the stay-put language narrowly came from the Sixth Circuit.[97] In *Kari H. By & Through Dan H. v. Franklin Special Sch. Dist*, the plaintiff, who was severely disabled, appealed the district court's judgment upholding an administrative law judge's order,

---

[91] *Andersen*, 877 F.2d at 1023. (We reject this view as inconsistent with the statutory language and the case law).

[92] *Id*. (The "section," 1415, speaks of only three types of proceedings: due process hearings, state administrative review where available, and civil actions for review brought "in any State court of competent jurisdiction or in a district court of the United States."); 20 U.S.C. § 1415(e)(2).

[93] Honig v. Doe, 484 U.S. 305 (1988)

[94] *Andersen*, 877 F.2d at 1023-24. ("the Supreme Court considered a contention that school districts should be entitled to change a child's placement, despite § 1415(e)(3), when the child's presence posed a danger to others; the Court made clear that the section was intended to protect children from *unilateral* displacement *by school authorities*.").

[95] *Id*. at 1024.

[96] *Id*. ("Once a district court has resolved the issue of appropriate placement, the child is entitled to an injunction only outside the stay-put provision, i.e., by establishing the usual grounds for such relief. Plaintiffs here have attempted no such showing.")

[97] Kari H. By & Through Dan H. v. Franklin Special Sch. Dist., 125 F.3d 855 (6th Cir. 1997).

placing the plaintiff in a self-contained special education classroom for five hours a day.[98] The plaintiff moved the district court to enjoin the district under the stay-put provision from implementing the decision pending the outcome of the circuit court's decision.[99]

The Sixth Circuit found no error in the district court's finding in placement and affirmed.[100] The court held that the plaintiff was not entitled to the stay-put provision because the section listed the three types of proceedings as due process hearings, state administrative reviews, and civil actions brought in either state or federal district court.[101] The court stated that "[i]f Congress wanted the provision to apply to circuit courts, it certainly could have said so."[102] The court read the appeal process as only being limited to either the state or federal district court because of the language in the stay-put provision.[103] The court also referenced the *Honig v. Doe* Supreme Court case as illustrating the purpose of the stay-put provision to protect children from unilateral displacement by school officials.[104] Finding that the purpose of the act would not be implicated in the case because the district court approved the placement by the school, [105] the court noted the change of placement was not a unilateral change by the school.[106]

a. Criticism of the Narrow Reading of the Stay-put Provision

---

[98] *Id.*

[99] *Id.* ("Plaintiff subsequently filed another complaint in the district court seeking to temporarily enjoin defendant, pursuant to the IDEA's stay-put provision, from implementing the ALJ's order pending review of the district court's decision by this court."); *See* 20 U.S.C. § 1415(e)(3)(A); 34 C.F.R. § 300.513 (1996).

[100] *Id*.
[101] *Kari*, 125 F.3d at 855.

[102] *Id*.

[103] *Id*.
[104] *Id*.
[105] *Id*.
[106] *Kari*, 125 F.3d at 855.

Other circuits have analyzed the stay-put provision and found that it applies through the entire appeals process including circuit review.[107] In *Joshua A. v. Rocklin Unified Sch. Dist*., the court addressed the issue of a disabled student seeking a stay-put reimbursement for education incurred during the appeal to the Ninth Circuit.[108] The plaintiff's "current educational placement"[109] that was implemented in the IEP was being provided to the child at his home for forty hours a week.[110] The child was being provided with in-home educational services during his appeal to the Ninth Circuit and sought for the district to continue to co-pay during the appeal process.[111] The court read the statute broadly, finding that since the statute allows a "civil action" to be brought to a district court, the circuit courts have jurisdiction because they hear appeals from final judgments of district courts pursuant 28 U.S.C. § 1291.[112]

The court also pointed out that the Department of Education regulation stated "during the pendency of any administrative or judicial proceeding."[113] The court emphasized the Department of Education regulation required the same result by including the language "during the pendency of *any* […] judicial proceeding."[114]

---

[107] *See* Joshua A. v. Rocklin Unified Sch. Dist., 559 F.3d 1036 (9th Cir. 2009); M.R. v. Ridley Sch. Dist., 744 F.3d 112 (3d Cir. 2014)

[108] 559 F.3d 1036, 1037 (9th Cir. 2009).

[109] 20 U.S.C. § 1415 (j)

[110] *Joshua*, 559 F.3d at 1037.

[111] *Id*.

[112] *Id*. at 1038. ("Civil actions under the IDEA may be brought in federal district courts. 20 U.S.C. § 1415(i)(2)(A). Circuit courts have jurisdiction to hear appeals from final judgments of district courts pursuant to 28 U.S.C. § 1291.

[113] *Id*.

[114] *Id*.; *See* 34 C.F.R. § 300.518(a)(emphasis added).

While the court acknowledged that Section 1415(j) listed four kinds of proceedings,[115] it did not confine its interpretation to those. The Ninth Circuit correctly determined that because civil actions could be brought to district courts and circuit courts had jurisdiction to hear appeals from district courts, the stay-put provision applied during appeals to the circuit level.[116]

The Ninth Circuit analyzed *Anderson's* holding and concluded that *Anderson's* reliance on the Supreme Court's decision in *Honig v. Doe*[117] was misguided because in *Honig* the context was limited to exigent circumstances.[118] The Ninth Circuit noted that *Honig* involved a disabled child who the school district argued posed a danger to other students; that scenario was not applicable to the most common placement issues that arise under stay-put provision.[119] Further, in a footnote the Ninth Circuit noted that under an amendment to 20 U.S.C. § 1415(k)(1)(G), which added exceptions to the pendency provisions, school districts would not be required to first appeal the change of placement of a student to the courts when "special circumstances" involving weapons, violence, or drugs were involved.[120]

The Ninth Circuit also weighed policy considerations and found that by not applying the stay-put provision parents would be forced "to choose between leaving their children in an educational setting, which potentially fails to meet minimum legal standards, and placing the

[115] *Id*. (the four proceedings in 1415 are (1) mediation; (2) due process hearings; (3) state administrative review; (4) civil action begun by the complaint under IDEA).
[116] *Joshua*, 559 F.3d at 1037.
[117] 484 U.S. 305 (1988).
[118] *Joshua*, 559 F.3d at 1039 ("*Andersen* was too quick to take language from *Honig* outside of the limited context of the exigency argument before the Supreme Court.").
[119] *Id*. at 1038.

[120] *Id*. at 1039 fn. 1.

child in private school at their own cost."[121] The Ninth Circuit remanded to the district court to determine the amount the district owed the disabled student while the appeal was pending.[122]

The most recent decision that emphasized the current split of authority came from the Third Circuit.[123] The Third Circuit held in *M.R. v. Ridley Sch. Dist*. that the stay-put provision of IDEA applies through the end of the entire appeal process.[124] The Third Circuit had to decide two issues of first impression.[125] The first was whether the timing of the claim seeking payment was timely when filed after a court has ruled in favor of the district,[126] and the second was whether the right to the funding extended through the entirety of a judicial appeal.[127] The proceedings began with plaintiff's parents bringing a complaint against the district alleging among other things that the district failed to provide their child with an appropriate IEP and as a result denied FAPE.[128] Plaintiffs enrolled their child in a private school and sought reimbursement from the school district for the second-grade private tuition.[129] The administrative hearing officer did find the school district denied Plaintiff of FAPE for the second grade.[130] Two years later, the district court reversed the administrative decision finding that the school did provide Plaintiff with FAPE.[131] After the district's decision, Plaintiffs requested

[121] *Id*. at 1040.

[122] *Id*.

[123] M.R. v. Ridley Sch. Dist., 744 F.3d 112, 125 (3d Cir. 2014).

[124] *Id*. at 125.

[125] *Id*. at 112
[126] *Id*.
[127] *Id*.
[128] *Id*. at 115; 20 U.S.C. § 1414 (2004).

[129] *Id*.
[130] M.R. v. Ridley Sch. Dist., 744 F.3d 112, 115 (3d Cir. 2014).

[131] *Id*.

payment of tuition from the date of first administrative decision through appeal pursuant IDEA's stay-put provision, which the school district denied, and plaintiffs filed an appeal to the Third Circuit.[132]

The Third Circuit began by emphasizing that the "stay-put rule [] requires that the child's placement under the IDEA at the time a disagreement arises between the parents and the school district…be protected while the dispute is pending."[133] The Third Circuit found that the school district was required to pay once the administrative hearing officer found that the private school placement was appropriate.[134] The court found that the placement switched by law from public to private when the administrative hearing officer found the private setting appropriate.[135]

Holding that the right to reimbursement proceeded through the appeal, the court noted that the "protective purposes" of the provision and the language of the statute itself supported the conclusion that Congress intended for the stay-put placement to remain until all proceedings, including all appeals.[136] The court read the statute broadly, specifically, the word "any" in "the pendency of any proceedings conducted pursuant to this section."[137] By including civil actions "in a district court,"[138] the court reasoned that Congress must have meant to include appeals to the circuit courts.[139]

---

[132] *Id*. at 116.

[133] *Id*. at 118.

[134] *Id*. at 119.
[135] *M.R.*, 744 F.3d at 124.
[136] *Id*. at 125.

[137] *Id*.; 20 U.S.C. § 1415(j) (2004).

[138] 20 U.S.C. § 1415(i)(2)(A) (2004).
[139] *M.R.*, 744 F.3d at 125.

Even if the court did not find the language of the statute itself to be persuasive, the court articulated that it would have reached the same conclusion based on the statute's overall goal and policy.[140] Emphasizing that the Third Circuit has consistently acknowledged that the stay-put provision was "designed to preserve the status quo," the court could not "sensibly find that a FAPE dispute" is completely resolved until all proceedings were completed. As a result of the decision, the school district, Ridley, petitioned for writ of certiorari to the Supreme Court.

State courts have also weighed in on the issue of what the stay-put provision encompasses. In *N. Kitsap Sch. Dist. v. K.W. ex rel. C.W.*, the court noted that the *Anderson* holding did not coincide with the Congressional intent of IDEA because the policy of IDEA was that students remain in place during disputes and not be shuffled from school to school while the proceedings were resolved.[141] The *Kitsap* court correctly indicated that the *Anderson* decision would limit the district's financial liability to just the "trial court proceedings."[142] As a result of the narrow reading of section 1415 by the *Anderson* court, the court opined that children would be forced out of the private school setting to the public even if the dispute continued to the appeal process.[143]

b. Supreme Court Precedent

[140] *Id*.

[141] 123 P.3d 469, 482 (2005) (holding in *Andersen* does not follow the general policy behind IDEA, which is to keep from disturbing the child throughout the statutory process designed to resolve disputes between the school district and the child's parents or guardians over where the child can receive the appropriate educational opportunities.)
[142] *Id*. at 483 ("Essentially, the *Andersen* decision suggests that a school district's maximum exposure to the costs of private special education is only through the trial court proceedings.")

[143] *Id*. at 482.

The Supreme Court has emphasized the importance of disabled students receiving free appropriate education. The Supreme Court in 1985 heard the case of *School Comm. Of Burlington v. Dep't of Education*.[144] The Court decided the issue of whether a school district would be required to reimburse parents of a disabled child who was placed in private school after deciding the IEP was inappropriate and later "the court ultimately determines that such placement, rather than [the one] proposed [in the] IEP, is proper under the Act."[145] The Court held in the affirmative that when a court determines that the private school placement was appropriate and that the IEP's public school placement was not, the school officials would be required to develop an IEP that included private schooling and was paid for by the district.[146]

The court emphasized that to hold otherwise would deprive the child of a free appropriate public education, which they are entitled to under 20 U.S.C. § 1401.[147] The court stressed that because of the length of time a "final judicial decision" takes it would be unjust to have parents bear the cost if ultimately, it was determined the private setting was appropriate.[148] To hold otherwise and not provide reimbursement would deprive the student of FAPE and contravene with Congress' intent.[149]

The court further reasoned that since there had been an administrative decision after the parents appealed the IEP that found that the private school placement was appropriate, reimbursement was appropriate.[150] Determining that the parents had not violated the "conditional command of § 1415(e)(3) that 'the child shall remain in the then current educational placement,'" the court also found that they had not waived any reimbursement rights by

[144] 471 U.S. 359 (1985).
[145] *Id*. at 369.
[146] *Id*. at 370.
[147] *Id*.
[148] *Id*. at 371.
[149] School Comm. Of Burlington v. Dep't of Education, 471 U.S. 359, 371 (1985).
[150] *Id*. at 372.

enrolling their son in the private school.[151] The court pointed out that *had* the parents made the decision to move the child and had the court determined later that the appropriate placement was in fact the public school, the parents would have been barred from receiving reimbursement.[152] Ultimately, the court unanimously held that the act granted courts the "power to order school authorities to reimburse parents" for private school expenses if the court found that the private school placement instead of the placement as proposed in the IEP was proper.[153]

The stay-put provision has also been litigated to the Supreme Court in a case that involved students trying to enforce the stay-put provision in the public school.[154] One of the main issues before the court in *Honig v. Doe* was whether the public school could exclude a disabled student from school because he was considered dangerous or disruptive under the Education of the Handicapped Act, today known as IDEA.[155] The Supreme Court refused to read a "dangerousness exception" into the act that would allow the displacement of the student from current educational setting of the public school.[156] The Supreme Court held that any suspension that lasted more than ten days would be considered a "change in placement."[157] The court emphasized that the act's main purpose was to prevent exclusion of disabled children from the schools.[158] However, should the schools seek exclusion by the courts to exclude a particularly dangerous student that would be proper.[159] Congress after this case did amend the act and added a "dangerous exception" to the stay-put provision. [160]

---

[151] *Id*.
[152] *Id*. at 373.
[153] *Id*. at 367.
[154] Honig v. Doe, 484 U.S. 305 (1988)
[155] 484 U.S. at 308.
[156] *Id*. at 322-23.
[157] *Id*. at 325, fn 8.
[158] *Id*. at 327.
[159] *Honig* 484 U.S. at 327-28 (noting that the school officials can seek a temporary injunction for the removal of a student they deem dangerous but it cannot be of indefinite time and done unilaterally).
[160] 20 U.S.C. 1415 (j)(k)(1)(G); 34 C.F.R. Sec. 300.530(g)

Both cases to the Court illustrate the protections afforded by IDEA and how those protections have been guarded by the Court. Moreover, the importance of students receiving FAPE and staying in current placements when disputes arise have been emphasized by the Court in both cases.

IV. Analysis

a. The Objective of IDEA supports the stay-put provision being placed throughout the entire Appeal Process

Protecting the disabled and providing them with access to free appropriate education were the primary goals of IDEA.[161] By not including the stay-put protection in the entire appeals process, disabled students would be stripped of the Act's protection. Furthermore, they would not be provided with FAPE. It would also be unjust for disabled students to be moved from school to school during the entire appeals process when the stay-put provision is clear in its language. This would contravene the intention of IDEA and deprive the disabled of their right to free appropriate education.

IDEA provides essential services for students with disabilities to obtain the same education as their counterparts without disabilities.[162] The key goal is to ensure that services to children with disabilities throughout the nation are provided as needed.[163] Forcing a disabled student to change placement in between appeals would prevent him or her from receiving continuous services. Transitional periods in schools almost undoubtedly result in students having to become accustomed to their new surroundings, as well as new teachers. The process of setting up and implementing the services that a disabled student requires also take time. By depriving a student of the stay-put provision, the student is not only losing educational time as

[161] 20 U.S.C. § 1400 (d)(1)(A) (2004).
[162] *See* 20 U.S.C. § 1412 (a)(4) (2004).
[163] http://idea.ed.gov/

they adapt to the school, but also losing time being provided services they are entitled to in order to receive FAPE.

The result of not allowing the stay-put provision to apply throughout the entire appeal process including to the circuit courts would also be a form of economic discrimination. Students who could afford private tuition would be able to remain in their current placement during the appeal process while students who could not afford the tuition would not be able to have the same choice. The outcome could result in students with monetary means having appropriate education while students without monetary means being deprived of FAPE. The parents of the students who could afford to maintain the placement that they feel is the most appropriate would undoubtedly do so.

However, for parents without the means, the decision to keep their children in the school that they believe is the most appropriate would not be a choice at all. Without the stay-put provision encompassing the entire appeal process, disabled children who went back to the public setting because of a lack of means would have no recourse after the district level. A broad reading of the stay-put provision is thus necessary to eliminate income differences among parents of disabled students that would allow some but not all to continue in their placements during appeals.

Ultimately, the protection of the most vulnerable was the most compelling purpose of the act. The Third Circuit in *M.R. v. Ridley* had it correct when the court noted that the "protective purposes" of the act easily lead to the correct result of keeping the disabled child in the current placement until final resolution.[164] The preservation of the continuum of education of the disabled child to preserve the "status quo"[165] of his or her education is of paramount importance

[164] *M.R.*, 744 F.3d at 125.
[165] *Id*.

in the daily lives of the most vulnerable and underrepresented. Most of these children live every day with unimaginable challenges and forcing them to change schools before a final determination is inequitable.

b. The Broader Reading of the Stay-Put Provision aligns with the Judicial Appeal Process

A correct reading of the stay-put provision would be for the courts to recognize that the circuit courts have jurisdiction over district courts final judgments, and, therefore, the stay-put provision protects children throughout the entire appeal process including the circuit courts. Because the language of the procedural safeguards of 20 U.S.C § 1415 give jurisdiction to the district courts,[166] it is clear that the Congressional intent was to protect the placement through the entirety of the appeal process, including in the circuit courts.

Since circuit courts have the jurisdiction to hear appeals from final judgments from district courts, it makes sense that the act was intended to have the disabled child "stay-put" during all proceedings. When Congress enacted IDEA, they were aware of this fact of jurisdiction by the circuit courts. Thus, it can be inferred that appeals to the circuits were intended to be covered under the stay-put provision.[167] The reading itself states, "the pendency of any proceedings;" hence, the provision did not limit itself to specifying which proceedings were covered. Accordingly, giving the text of the stay-put provision its plain meaning also supports the fact that the stay-put provision will be in effect throughout the entire appeal process. Moreover, since the "then current educational placement" has been, at some point prior to the appeal, approved or agreed upon by the district, reading the language in the provision as providing the disabled student uninterrupted education makes sense.

---

[166] 20 U.S.C. § 1415

[167] *See* M.R. v. Ridley Sch. Dist., 744 F.3d 112, 125 (3d Cir. 2014)

Moreover, it is unfair to limit and discourage the appeal process of disabled children. A disabled student's educational rights and access can surely be said to be worthy of appeal. To limit the parents of the disabled to just the district level, is to undermine the vigor and passion that most parents have for ensuring their children have access to the appropriate education. There is no justifiable reason that Congress would have limited the right of disabled children to appeal to the circuit courts when the act itself has so many procedural safeguards.

Furthermore, the option to apply for a traditional injunction is not the solution. Although the *Anderson* court reasoned that parents would still have the opportunity to apply for a traditional injunction if they did not have the protection of the stay-put provision, this premise goes against congressional intent of IDEA.[168] The stay-put provision was specifically designed to relieve parents of the sometimes heavy and burdensome showing that accompany an application of a traditional injunction.

c. Supreme Court precedent supports a broad reading

The Supreme Court has acknowledged the importance of providing FAPE and the power granted to the courts by IDEA to provide appropriate relief.[169] In *Burlington*, the Supreme Court stressed that a "final judicial decision" could take years and that forcing parents to choose between the appropriate education or placing the student in what they believed to be an inappropriate placement would be unjust if it were later determined by a court that the private setting was appropriate.[170] The Supreme Court correctly foresaw that parents would battle their child's placement for *years*, therefore, acknowledging that the appeal process could very likely include the circuit courts.[171]

---

[168] *Andersen*, 877 F.2d at 1024.
[169] *See* Sch. Comm. of Town of Burlington, Mass. v. Dep't of Educ. of Mass., 471 U.S. 359, 371,(1985)
[170] *Id*.
[171] *Id*.

The Court in *Burlington* also reiterated that Congress intended that the child's right to *free* appropriate public education meant parents could fully participate in the IEP process.[172] Under a narrow reading of the stay-put provision, if a parent was refused reimbursement by the district court, but later vindicated by the court of appeals, that parent would have no right to reimbursement: that would deny free education. Further, by limiting reimbursement to just the district level, parents would not be fully participating in the IEP process.

d. The Cost should not be the determinative factor

Cost is the major counter-argument against keeping the stay-put provision in place through appeals to the circuit level. While the costs are considerations, they should not be dispositive when deciding the appropriateness of the education for the disabled. Furthermore, if the school district provides the appropriate education to the disabled, they will not have to shoulder the cost later of private school because parents would not have to seek an alternative to public schools.

Besides the cost will not always be a factor because the appeal could also be parents appealing to keep their child in a mainstream public school setting. The stay-put provision protects the "then-current placement", and that could be a public or a private one. The development of IDEA initially was to maintain disabled children in the public schools. The stay-put provision can be used by parents who are looking to keep their children in mainstream classes not just to keep them in private schools. Therefore, the argument that allowing the stay-put provision to remain through the appellate level would be too costly does not take into consideration the parents who are fighting to keep their kids in public settings.

Conclusion

[172] *Id*.

In summary, the stay-put provision and its protections for the disabled students should be kept throughout the entire judicial process including appeals. The congressional intent in developing the IDEA act supports the stay-put provision remaining throughout the appeal process. Furthermore, the fact that the circuit courts have jurisdiction to hear district court appeals also supports the inference. The Supreme Court cases that have heard IDEA controversies likewise demonstrate the importance of protecting the current placement of disabled students. Finally, in order to maintain stability and consistency, the disabled child should be allowed to stay in his or her current educational placement until the final disposition of the highest court. Free appropriate public education is a right that all children are entitled to and stripping them of protections during the appeal process would infringe upon this right.

Limiting the stay-put protections to just administrative and trial courts, such as district courts, forces disabled children with limited means to move back to placements that could have turned out to be inappropriate. As a result, these children are deprived of FAPE. While it is true that the circuit court could affirm the district court, by not keeping the stay-put provision in place, a disabled child does not have the opportunity to know the outcome.